

**MINUTES
OF THE REGULAR MEETING OF THE
EDINA CITY COUNCIL
HELD AT CITY HALL
DECEMBER 16, 2008
7:07 P.M.**

ROLLCALL Answering rollcall were Members Bennett, Housh, Masica, Swenson and Mayor Hovland.

CONSENT AGENDA ITEMS APPROVED Motion made by Member Swenson and seconded by Member Masica approving the Council Consent Agenda as presented.

Rollcall:

Ayes: Bennett, Housh, Masica, Swenson, Hovland

Motion carried.

MEMBER MASICA RECOGNIZED Mayor Hovland advised that tonight would be Council Member Masica's last meeting as an Edina Council Member and noted that her family members were in attendance. He stated Member Masica had served on the Council for eight years and all have found her to be well prepared, possessing a wonderful sense of humor, and loyal to the City of Edina. **Member Housh introduced a Resolution of Commendation.** Member Bennett seconded the motion.

Ayes: Bennett, Housh, Swenson, Hovland

Abstain: Masica

Motion carried.

Mayor Hovland stated his hope that Member Masica would remain active in the community and presented her with an engraved crystal bowl and resolution of commendation. All showed their appreciation by responding with a round of applause.

Gene Persha, 6917 Cornelia Drive, read a statement thanking Member Masica for her outstanding public career and contribution to Edina while serving on the Council.

Janet Bohan, 800 Coventry Place, commended Member Masica for her extensive preparation, service given, willingness to hear constituents, attendance at community events, and wished her the best.

John Bohan, 800 Coventry Place, thanked Member Masica for always answering her telephone and stated his support should she decide to once again run for office.

Joellen Deever, 7405 Oak Lawn Avenue, stated that Member Masica had been one of the best members on the Council and outstanding in her service to the community by being willing to listen to everyone. She thanked Member Masica for her contribution to Edina.

Jack Rice, 4001 West 49th Street, praised the Council and in particular Member Masica for her eight years of service. He noted during this time difficult and far-reaching decisions were made about rebuilding Edina's infrastructure, City Hall, Fire Department, and Promenade. He stated he had always found Member Masica to be receptive, intelligent, and she would be sorely missed.

Jim Masica, 6816 Valley View Road, stated he agreed with all the comments made tonight about his wife. Mr. Masica said she had worked very hard, and was passionate about Edina. He stated the benefit would be that her family would see more of her, until she found her next venture.

Member Masica stated she would reserve her comments for staff until later in the meeting but wanted to thank her family for their encouragement, support, understanding, and being her best cheerleaders. She also thanked them for allowing her to make the Council a priority. She stated she owed her family a debt, which would take time to repay. Member Masica expressed appreciation to citizens who have supported and encouraged her and supplied her with an unending amount of vitality. She

Minutes/Edina City Council/December 16, 2008

stated words cannot express her gratitude to the residents and thanked them for the trust placed in her by allowing her to serve Edina.

***MINUTES - REGULAR MEETING OF DECEMBER 2, 2008, WORK SESSION OF DECEMBER 2, 2008, AND TRUTH IN TAXATION OF DECEMBER 1, 2008, APPROVED** Motion made by Member Swenson and seconded by Member Masica approving the minutes of the Regular Meeting of December 2, 2008, Work Session of December 2, 2008, and Truth In Taxation of December 1, 2008.

Motion carried on rollcall vote – five ayes.

PUBLIC HEARING HELD ON FINAL DEVELOPMENT PLAN AND VARIANCE – APPEAL EBERHARDT ADVISORY SERVICES, 3930 49½ STREET WEST – RESOLUTION NO. 2008-126 APPROVED Affidavits of Notice presented and ordered placed on file.

Planning Director Presentation

Planning Director Teague used a map to identify the location of this PCD-2 zoned property and explained the applicant proposed to tear down the existing Edina Realty building and rebuild a 13,130 square foot building in the same footprint. He displayed pictures of the proposed building and described the exterior building materials. Mr. Teague advised that a three-foot variance for the rear parking lot was also being requested. On December 4, 2008, the Zoning Board of Appeals unanimously recommended approval of the variance request. Staff had appealed the Board's decision in order for the Council to take final action on the entire project. Mr. Teague advised that a primary issue was whether the proposed redevelopment was reasonable for the site. Staff believed it was a reasonable use since it was the same use and size. He described the parking requirements and consideration of the public parking ramp, noting it was consistent with the 1985 parking variance. The encroachment of the variance being requested was minor and found to be reasonable by staff, the Planning Commission, and Zoning Board of Appeals. Parking was not visible to the homes to the north because of the 12-foot drop in elevation and pine trees that would provide additional screening. Thus, the variance would not change the character of the neighborhood. Mr. Teague read the proposed conditions and stated approval was recommended subject to those conditions.

The Council discussion included: the height of the roof was 26 feet and the rooftop HVAC unit was 14 feet above the roof line; the existing agreement allowed both property owners to access the parking ramp; the existing parking variance would remain in effect; the parking ramp ratio was one space for 200 square feet of building.

Proponent Presentation

Jim Nelson, 7790 Lochmere Terrace, stated the existing building had been occupied by Edina Realty as a tenant since 1986. The building was now at the end of its useful life and they looked forward to investing in a new building that would bring value to the 50th and France business district through sustainable design features incorporating a long-term vision.

Dan Green, Miller Dunwiddie Architecture, displayed colored renditions of the existing office building, noting it would be moved back about one foot to create more space at the street side of the building. The area on the west side would be improved as a pocket park for the tenants and connection to the parking spaces. The plantings and parking configuration would be adjusted to better define parking and control storm water through a curb system. Mr. Green presented the proposed design and sustainability issues, noting it would be an energy efficient "green" building. He displayed several exterior elevations for buildings in this location; noting the common themes were brick, cast stone accents, and two-story commercial fronts. He then displayed exterior elevations for the proposed building and described the classic design. The height of the mechanical unit was 39 feet, just under nine feet of the roof elevation, and would be difficult to see since it was located in the middle of the roof area. Mr. Green described the one-way traffic circulation and parking configuration, and noted the location of the pedestrian bridge. He stated they would encourage tenants to park on the upper levels of the ramp. Mr. Green presented the landscaping plan and advised of the improvements that

would be made to create a permeable surface with pavers, increase green space on the north side as well as a new retaining wall and parking area. He displayed colored renditions of the current and proposed buildings.

In response to Council's inquiry, Mr. Nelson stated they have been in discussions with lenders, but do not yet have financing. During construction, Edina Realty staff from this location would be housed at Edina Realty's 6800 France Avenue location. Mr. Green presented and described the exterior building materials of reddish-brown brick, Indiana limestone, cast stone, dark colored metal panels, and linear sunshades that would be used on the south side of the building. It was indicated that the cross easement agreement for the drive aisle was perpetual. The Council discussion included whether the red banner depicted on the front elevation identified an area of signage and met the City's guidelines for color; a sign permit would be considered at a later date; the sidewalk would be constructed of the City's standard paver and be about five feet wide; the applicant would work with staff on the spacing and planting of replacement landscape trees; and that the height of 26 feet indicated on the plans described the height of the roof parapet, not including the mechanicals.

Mayor Hovland opened the public hearing at 7:59 p.m.

Public Comment

No one appeared to comment.

Member Masica made a motion, seconded by Member Swenson, to close the public hearing.

Ayes: Bennett, Housh, Masica, Swenson, Hovland

Motion carried.

Member Housh introduced Resolution No. 2008-126, Approving a Final Development Plan with variances for Eberhardt Real Estate Advisory Services with the following findings:

- 1) **With the exception of the variance, the proposal would meet the required standards and ordinances for a Final Development Plan.**
- 2) **The new building would be generally the same size as the existing building.**
- 3) **The proposal meets the required standards for a variance because:**
 - a. **The proposed use was reasonable. It provides a reasonable on-site parking area for a new building that would be the same size as the existing building.**
 - b. **The new parking area was a minor encroachment into the rear yard setback.**
 - c. **The encroachment would be located into a hill that separates the site from the adjacent residential property to the north; therefore, the proposed encroachment would not be visible from the residential property. The parking area sits 12 feet lower than the home to the north.**

Approval of the Final Development Plan was subject to the following conditions:

- 1) **The site must be developed and maintained in conformance with the following plans, unless modified by the conditions below:**
 - **Site plan date stamped September 26, 2008.**
 - **Building elevations date stamped October 23, 2008.**
 - **Grading plan date stamped September 26, 2008.**
 - **Landscape plan date October 23, 2008.**
 - **Building materials must be consistent with the materials presented to the City Council on December 16, 2008, and on file in the planning department.**
- 2) **Submit a copy of the Minnehaha Creek Watershed District Permit. The City may require revisions to the approved plans to meet the District's requirements.**
- 3) **Per Section 850.10. Subd. 3.B of the City's Zoning Ordinance, a letter of credit, performance bond or cash deposit must be submitted in the amount equal to 150% of the proposed landscaping prior to issuance of a certificate of occupancy for the building.**
- 4) **The basement area shall not be remodeled into office space. The basement may be used for storage or mechanical space only.**

Minutes/Edina City Council/December 16, 2008

- 5) Pavers along the front, side and rear of the building must be pervious, and subject to approval of the City Engineer.
- 6) The on-site parking stalls must be striped.
- 7) Compliance with all conditions listed by the City Engineer in his memo dated October 24, 2008.
- 8) The property owner must enter into a Skyway Agreement with the City of Edina to connect the second story walkway to the parking ramp. Cost of the connection would be the responsibility of the property owner of 3930 49½ Street West. The Skyway Agreement was subject to approval of the Edina Housing and Redevelopment Authority.

Member Bennett seconded the motion.

Rollcall:

Ayes: Bennett, Housh, Masica, Swenson, Hovland

Motion carried.

PUBLIC HEARING HELD ON PRELIMINARY DEVELOPMENT PLAN AND PRELIMINARY REZONING – EBENEZER SOCIETY ON BEHALF OF 7500 YORK AVENUE COOPERATIVE – RESOLUTION NO. 2008-127 APPROVED Affidavits of Notice presented and ordered placed on file.

Planning Director Presentation

Mr. Teague described the location of the subject site on York Avenue and displayed a picture of the existing nine-story, 337-unit senior cooperative building. The Ebenezer Society, on behalf of the Cooperative, had made the application to build a 76-unit addition to the existing building. He displayed pictures depicting the underground parking garage and proposed four-story structure comprised of 47 assisted care units, 16 memory care units, and 13 elder care suites with underground parking and a small surface lot. The request before the Council was for the preliminary development plan and preliminary rezoning which was a two-step process. Mr. Teague said, if approved, application would be made for the final development plan and final rezoning from PRD-4 Planned Residential District to PSR-4 Planned Senior Development District. The property was currently zoned for an all-age facility, not strictly for senior housing. If given preliminary approval, application would also be made and reviewed by the Zoning Board of Appeals for a maximum square footage variance for 14 dwelling units and a three-foot setback variance for the building from Edinborough Way. He added presently the site existed as two lots so the lot lines would be shifted to accommodate the new building.

Mr. Teague advised that the traffic study conducted by Wenck Associates indicated the existing roadway system was adequate to handle the 234 trips per day that would be generated. The Transportation Commission reviewed that study and recommended approval. He reviewed the parking calculation and advised that the proposal was well within the senior housing requirements. Mr. Teague described the landscaping plan, noting a number of trees would be removed as a result of the addition but would still exceed the City's requirement. On density, a maximum of 44 dwelling units per acre was allowed and the proposal was for 36 units per acre and consistent with densities in the area. The primary issues were whether the proposed use and rezoning were reasonable for this site. Staff felt the use was compatible with surrounding uses, densities were consistent, amenities were in this proximity, and sustainable design was being proposed. Traffic would be supported by existing roads and the assisted living units would provide an opportunity for continuum of care. He noted the addition of senior housing may provide an opportunity for seniors that live in single-family homes to move to this facility and open the home for a younger family to move to Edina. Staff and the Planning Commission agreed that PSR-4 was an appropriate zoning district and the variances were justified due to the hardship caused by the existing underground parking garage. They also felt the unit size was reasonable but did recommend the City further study the question of whether or not the existing cap on the unit size of senior housing should be retained. On November 28, 2008, the Planning Commission unanimously recommended approval of the request subject to the findings and conditions outlined in the staff report. The Planning Commission further recommended that the

Council authorize them to examine and consider a zoning ordinance amendment regarding the maximum square footage requirements in the PSR zoning district.

The Council discussion included: surface parking would be located on top of the existing underground garage to preserve open space and gardens located on the northeast side; 465 parking stalls were provided in the site plan; if this property was rezoned, most of the units at 7500 York would become nonconforming due to their size; and, a direct vote of the 7500 York Cooperative owners was required to approve this project.

Charles Bassford, attorney representing the 7500 York Cooperative, stated the vote of the Cooperative had not yet been held but when taken, each unit would get one vote and 51% of the 337 units was needed for approval. Mr. Bassford explained the remaining issue to be resolved related to financing for the project and whether 7500 York would have to subordinate to any of that debt of the leasehold property. Once that issue was resolved, the membership would vote.

Proponent Presentation

Mark Thomas, President of Ebenezer Society, reviewed their 90-year history as a faith-based not-for-profit organization that functions as an older adult services arm of the Fairview Health System for over 3,500 seniors. This location was the first senior cooperative in the Country, deemed the most successful thus far, used as a template for other projects, and currently had a 10-year wait for certain units. Some time ago, the Board of Directors asked Ebenezer if they would add assisted living units. The average age was now over 84 years so they decided to move forward with this design concept and a market study was commissioned. Mr. Thomas stated an Ad Hoc Committee was formed and the process was rich in feedback from the York community. The planned business model was that the assisted units and 7500 York physical plants would operate independently of each other but programming would be aligned. Ebenezer would own and manage the assisted living facility and enter into a land lease for 7500 York.

Russ Halverson, 7500 York Avenue, Apartment 208, stated that he had served on the Board of Directors for six years, was President of the Board when the assist living concept was first considered, and Chaired the Ad Hoc Committee that was appointed by the Board to work closely with Ebenezer to develop the proposal being considered tonight. He stated that since its inception 34 years ago, the Cooperative had always been a leader in offering extensive services but was acutely aware that the missing piece in the program was assisted living. Mr. Halverson described the trauma experienced by residents, now more than 12 each year, who must move to assisted living, leaving their family and friends at 7500 York. The Board recognized the expertise of Ebenezer to develop such a program. Town hall meetings were held to share the concept with residents and after comprehensive presentations, more than 90% of those present favored proceeding with the project. At a monthly meeting, again about 90% of those present indicated they favored the Board's approval. Mr. Halverson conceded that with major building projects, some residents were asked to make a sacrifice for the good of the whole community. They were aware that some residents would experience change, which can be upsetting. However, the nature of the Cooperative was to do what was in the best interest of the entire membership with the understanding that some members have to be asked to make adjustments which, in the end, would bring good to the entire community. Mr. Halverson indicated that every effort had been made to keep changes to a minimum and as proposed, the landscaping and building would add beauty to the campus. He advised their Marketing Director had indicated nearly every person on the waiting list had asked if assisted living would be added and if not, they would explore options elsewhere. Mr. Halverson stated if approved, residents of 7500 York would have continuum of care to meet their changing needs without moving to facilities outside the community.

Ward Isaacson, Pope Architects, stated the major design considerations were sensitive to the comments of 7500 residents to maintain as much green space as possible. He advised of the outdoor amenities that would be maintained, noted the impact of traffic would be minimized, described the views from 7500 York and the surrounding community to the building, and that the design would

Minutes/Edina City Council/December 16, 2008

compliment the existing site and architecture geometry. He displayed the site plan and noted the parking was configured to maintain the green space. He described the access points from this facility and displayed a picture of the existing plaza, noting it would be landscaped, surfaced with pavers, and furnished to tie into the existing plaza of 7500 York Avenue, which was currently underutilized. Mr. Isaacson noted the one-story link into 7500 York and the building's step back design to mimic the architecture of the 7500 building. The memory care courtyard would be on the west side and provide a secure outdoor space, fire lanes were adequate, and they would maintain the walking path. He then presented the four floor plans and described what would be contained on each floor. Mr. Isaacson presented an exterior elevation, noting the building materials of rockface block, stone, Hardi siding, and stucco were complimentary to the 7500 York structure. A "fly by" video was presented that depicted how the building would be located on the site.

In response to Council, Mr. Thomas advised that 7500 York residents would receive priority placement for the assisted care units and could receive outpatient rehab at the new facility, if needed. He also indicated they had studied the option for a green roof and found it may be cost prohibitive; however, it would be explored further. Mr. Thomas advised that they usually set aside ten percent of the units for residents who need financial assistance. He explained that Medicare and Medicaid do not cover assisted living. If a 7500 York resident required live-in or skilled care during recovery from a fall, they would have to move to a skilled nursing facility to receive Medicare reimbursement or receive home care services in their own unit to be covered by Medicare Part B. Mr. Thomas further explained the circumstances under which Medicare provided payment under Schedule B regardless of whether the client was in a single-family home or assisted living. Elderly Waiver provided payment through an agreement with the County and was backed by the State and Federal governments.

The Council noted the height of 45 feet was from grade on the entry side to the mansard on the fourth story and it was 58 to 60 feet from grade to the middle of the peaked roof. In response to Council, Mr. Bassford stated the Board was comprised of nine members elected by the Cooperative for three-year terms in staggered elections. He indicated he was present at the community meetings at which a vast number of residents were present, a vote taken by raised hands, and the overwhelming number were in favor of exploring this option. The entire Cooperative of 337 units would vote by secret ballot once the outstanding issues were resolved.

With regard to the cost, Mr. Thomas explained that cost of assisted living varied a lot depending on the unit and package selected and service components the resident needed. The monthly cost for basic services was \$2,500 to \$2,800, \$4,000 for an assisted living environment and memory care units, and over \$4,000 for memory care with medical needs.

Jill Nokleby-Kaiser, 10326 Major Drive, Brooklyn Park, Director of Housing for Ebenezer Management Services, explained how the unit, level of service, and packaged services were determined through a collaborative effort of the nursing staff, family, and consumer based on an assessment of their needs.

Mayor Hovland opened the public hearing at 9:00 p.m.

Public Comment

Mark Johnson, 7500 York Avenue, Unit 438, read a statement indicating many residents feel this proposal presented more disadvantages than advantages and requested the Council not approve the application. He stated those who attended the meeting and raised their hand thought they were just requesting additional information and believed the project had now been "steamrolled" along by Ebenezer. Mr. Johnson stated residents were requesting a town hall debate and open meeting to discuss this proposal because they were concerned it was being promoted by those who may be on the Ebenezer payroll. He expressed concern that the project would result in the rolling hills and Evergreen trees at the northwest corner of the campus being replaced by the new building, parking spaces, and garbage disposal area. He suggested the northeast corner would be more suitable for a building. Mr. Johnson asserted that looking at crimson sunsets would be a thing of the past and the character would change due to ambulance and police cars coming and going at all hours of the night.

He indicated concern for safety and security due to new campus activity and additional vehicles leading to traffic congestion. Mr. Johnson stated he believed residents of 7500 York deserved substantial payments to lease this land; however, Ebenezer wanted free use of the land for the first several years. He believed this was not the right economy for this project and that some residents did not understand the cost to live in the assisted housing units was not covered by Medicare. Mr. Johnson also expressed concern that parking heavy vehicles on top of the parking garage may have long-term consequences. He felt 7500 York should be good neighbors to Centennial and Coventry townhomes and questioned whether they understood the true scope of this expansion. Mr. Johnson asked the Council to vote "no" on the preliminary zoning and development plan.

Robert Jarvis, 7500 York Avenue, Apartment 117, stated he favored the assisted living building on the 7500 campus. He stated he was a nine year resident, member and secretary of the Cooperative, and served on the Assisted Living Ad Hoc Committee. Mr. Jarvis stated he favored the proposal for personal reasons, benefit of the greater community, and for the future of the Cooperative. He felt assisted living would be an ideal fit for many couples to provide assisted living that would be close and connected with covered walkway. Mr. Jarvis noted the median age of 7500 York residents was 84 years 10 months, and 79 residents were age 90 or older, all living independently. Secondly, this facility would fulfill a need in the surrounding communities for an aging population. Thirdly, the potential for associated assisted living was essential to the future of 7500 York as a senior housing cooperative. He closed his comments by reciting a comment made by Barbara Murphy, Marketing Director of 7500 York for over 16 years, who strongly supported proceeding with assisted living to provide a continuum of care. He encouraged the Council to approve this application for assisted living and memory care.

Marjorie Sullivan, 7500 York Avenue, Apartment 531, stated she had been a resident for a year and a half and while Barbara Murphy mentioned assisted living at the time she bought her unit, she was not interested in that service. Ms. Sullivan stated she enjoyed the beautiful yards and gardens and did not believe Edina had to build on every bit of green space. She felt there was not a "level playing field" for those who oppose the application and that residents should have had the ability to vote whether the Ad Hoc Committee was formed. She felt the Board of Directors was "out of bounds" when it asked for a raised hand vote instead of a formal vote. Ms. Sullivan stated assisted living facilities already exist to the north, south, and another project would be opening soon. She suggested that Ebenezer find another property for assisted living.

Gemma Hession, 7500 York Avenue, Apartment 209, stated she had been healthy and independent until several weeks ago when she fell and needed a wheelchair and walker during recovery. She stated this was a new experience for her, having to depend upon her friends at 7500 York during recovery, so it occurred to her that having an assisted living facility on the property would have been perfect because the short stay beds and physical therapy would have been sufficient for her case. Also, her friends could have visited often without special transportation. She stated that as residents of 7500 York age, they may need additional care and it would be pleasant for couples should one need additional care.

Gil Langseth, 7500 York Avenue, stated he was trained as a hospital architect and had worked 22 years as a hospital and health care consultant until retirement. He had been a member of the Ad Hoc Committee for two years and found Ebenezer had genuinely solicited opinions of residents, attended many of their meetings, been interested in feedback, and participated in feedback from the total membership. During one "marathon session" last July, Mr. Thomas presented all aspects of the project and again at nine consecutive meetings to stimulate questions, answers, and items of concern from residents. These meetings were well attended. Mr. Langseth stated when Ebenezer helped develop the original project over 30 years ago, the 7500 building was located in the middle of a super block. This created substantial green space, drives, and parking areas on all four sides of the building, allowing residents to live in a "park." Then, 15 years ago, the 28,000 square foot underground garage was constructed, resulting in loss of green space that was replaced by a gravel roof. Originally, the concept was to build the entire assisted unit building on top of the present

Minutes/Edina City Council/December 16, 2008

underground garage to preserve green space but the building would have been only 60 feet from the East tower and considered an intrusion to those residents. Pope Architects very wisely located the building so it would more naturally flow with the geometry of the existing building. Mr. Langseth assured the Council that the location of the proposed building and exterior design were extremely compatible with 7500 York in terms of geometry, form, vertical accents, bay window treatments, and color. He believed that Ebenezer and Pope Architects listened to them and the proposed addition would be something 7500 York could be extremely proud of and a benefit to the community.

Dr. Esther Ruth Emdars, Chairman of the Finance Committee, stated she was interested in having more services on the campus that would help to compete with new buildings. She stated she served ~~as~~ on the Assisted Living Ad Hoc Committee and watched them work with the architect to create completely new forms and buildings to address what they wanted. Dr. Emdars advised that 7500 York residents ask whether the assisted living building would be started in the Spring before they die, and they were serious because they know that type of unit was needed. She stated she hoped the Council would vote to approve the application.

Robb Gruman, Vice President of Facilities and Guest Services for the Fairview Southdale Hospital, stated he was appearing on behalf of the senior management team of Fairview Southdale Hospital and Fairview Health Systems. He congratulated Ebenezer, Pope Architects, and 7500 York residents for putting together a project mindful of what seniors need. Mr. Gruman believed the plans, fine complement of services, and architecture were suitable in Edina, and assisted living would provide a continuum of care for 7500 York residents and the community. He urged the Council to support the project and see the wisdom of it as well.

Member Masica made a motion, seconded by Member Swenson to close the public hearing.

Ayes: Bennett, Housh, Masica, Swenson, Hovland

Motion carried.

Member Housh introduced Resolution No. 2008-127, Approving a Preliminary Development Plan and Preliminary Rezoning for 7500 York Avenue Cooperative with the following findings:

- 1) The proposed addition was consistent with the multiple family housing developments to the north, south, east and west.
- 2) The proposed density was compatible with densities in the area.
- 3) Given the City of Edina's aging population, senior housing was a need in the City.
- 4) The existing roadways would support the proposed project.

Approval was subject to the following conditions:

- 1) The Final Development Plan must be generally consistent with approved Preliminary Development Plans dated June 30, 2008.
- 2) Sustainable design. Final Development Plans must include the Sustainable Initiatives as outlined in the applicant's narrative on pages A5a-A5c of the staff report.
- 3) Compliance with the conditions outlined in the City Engineer's memo dated September 24, 2008. Member Masica seconded the motion.

The Council discussion included: concern that consideration was premature because the decision was that of the Cooperative based on its bylaws, democratic structure, and process that had not yet been followed; question remained about the number of units represented in the hand vote; support for Ebenezer's work in the community; providing aging in place ~~that~~ was a priority for residents who testified during the Comprehensive Plan process; agreement that the 11.5 acre site could accommodate this structure; the proposed landscaping was attractive in creating rooftop gardens for 9th floor residents to view and generous in providing three times the number of trees required; there was good utilization of sustainable design and initiatives; and, the step down design and elevation created an interesting façade. In addition, the application was recommended for approval by the Planning Commission, the resident's average age was 84, the project would result in no traffic impact, and was within the density requirements.

Attorney Knutson stated he had reviewed the resolution of the Board, but had not examined the Cooperative's bylaws. He noted this was a preliminary request, the first step in the process, and the final rezoning request cannot proceed until the Cooperative members actually vote.

The Council noted there was currently a nonconforming use with the parking spaces and if rezoned, the parking would conform but the size of many units would not conform. The Council discussed potential consequences should the property be rezoned, but the Cooperative owners not support the project. It was acknowledged that the Council had received a secretary's certification on the action by the nine-member Board of Directors elected by the Cooperative who determined to seek a site plan review for up to 76 senior assisted care units. The Board was asking the Council to take action on that application. A majority of the Council indicated a level of comfort in taking action on the preliminary application with the understanding the proposal would not be considered for final action without the Cooperative's vote results. Attorney Knutson reiterated that before the final rezoning was considered, there would need to be an affirmative vote of a majority of the Cooperative owners and Ebenezer would have to negotiate contracts, agreements, and a lease arrangement with the Cooperative. Member Bennett stated if the property belonged to Ebenezer she would support it enthusiastically. However, the property belonged to the owners of the Cooperative who were divided about the proposal. She stated she believed Council action at this point was premature.

Rollcall:

Ayes: Housh, Masica, Swenson, Hovland

Nays: Bennett

Motion carried.

PUBLIC COMMENT

No one appeared to comment.

***AWARD OF BID – 2009 POND DREDGING IMP STS-357, CONTRACT ENG 09-1** Motion made by Member Swenson and seconded by Member Masica awarding the bid for 2009 Pond Dredging, Improvement STS-357, Contract ENG 09-1, to the recommended low bidder, Fitzgerald Excavating and Trucking, Inc. at \$25,250.

Motion carried on rollcall vote – five ayes.

RESOLUTION NO. 2008-129 APPROVED ACCEPTING VARIOUS DONATIONS Mayor Hovland explained that in order to comply with State Statutes, all donations to the City must be adopted by Resolution and approved by four favorable votes of the Council accepting the donations. **Member Swenson introduced Resolution No. 2008-129 Accepting Various Donations.** Member Bennett seconded the motion.

Rollcall:

Ayes: Bennett, Housh, Masica, Swenson, Hovland

Motion carried.

***TRAFFIC STUDY REPORT OF DECEMBER 3, 2008** Motion made by Member Swenson and seconded by Member Masica accepting the Traffic Study Report of December 3, 2008.

Motion carried on rollcall vote – five ayes.

REAPPOINTMENT OF CITY PROSECUTOR Following discussion, **Member Masica made a motion, seconded by Member Swenson, to reappoint Bonner and Borhart LLP as City Prosecutor.**

Ayes: Bennett, Housh, Masica, Swenson, Hovland

Motion carried.

RESOLUTION 2008-130 ADOPTED APPROVING AMENDMENT TO THE EASEMENT AGREEMENT OF 6504-6508 STODDARD CIRCLE City Engineer/Public Works Director Houle explained it was necessary to cross 6508 Stoddard Circle to access 6504 Stoddard Circle so Council action was needed to amend the easement agreement. He indicated that sufficient access was

Minutes/Edina City Council/December 16, 2008

provided for emergency vehicles and public notification was not required for the relocation of a private easement. **Member Masica made a motion to adopt Resolution No. 2008-130 Amendment to Easement Agreement, Lawrence C. and Cynthia B. Holz.** Member Bennett seconded the motion.

Ayes: Bennett, Housh, Masica, Swenson, Hovland

Motion carried.

***CONFIRMATION OF CLAIMS PAID** Motion made by Member Swenson and seconded by Member Masica approving payment of the following claims as shown in detail on the Check Register dated December 4, 2008, and consisting of 21 pages; General Fund \$386,328.35; Communications Fund \$5,605.43; Working Capital Fund \$2,269.83; Art Center Fund \$5,887.87; Golf Dome Fund \$1,577.22; Aquatic Center Fund \$86.09; Golf Course Fund \$1,696.77; Ice Arena Fund \$1,494.32; Edinborough/Centennial Lakes Fund \$1,989.66; Liquor Fund \$118,579.87; Utility Fund \$16,160.51; PSTF Agency Fund \$8.10; **TOTAL \$541,684.02** and for approval of payment of claims dated December 11, 2008, and consisting of 32 pages: General Fund \$477,861.01; CDBG Fund \$27,937.00; Communications Fund \$744.31; IBR #2 Fund \$11,747.46; Working Capital Fund \$34,820.82; Construction Fund \$3,396.00; Art Center Fund \$4,154.41; Golf Dome Fund \$2,621.25; Aquatic Center Fund \$400.97; Golf Course Fund \$25,110.68; Ice Arena Fund \$19,221.80; Edinborough/Centennial Lakes Fund \$26,117.67; Liquor Fund \$215,752.75; Utility Fund \$362,903.83; Storm Sewer Fund \$985.46; Recycling Fund \$35,380.00; PSTF Agency Fund \$5,809.43; **TOTAL \$1,254,964.85**, and Credit Card Transactions dated October 28, 2008 to November 25, 2008; **TOTAL \$2,991.42**.

Motion carried on rollcall vote – five ayes.

2009 OPERATING BUDGET AND 2009 TAX LEVY – RESOLUTION 2008-128 APPROVED ADOPTING THE 2009 OPERATING BUDGET AND SETTING THE 2009 TAX LEVY

Manager Hughes stated the Council asked staff to respond with alternatives should the 2009 levy be reduced to less than four percent. Staff found the effect of reducing by one-half percent was negligible to an individual property (annual tax savings of \$3 for median home) so he recommended the Council not consider that levy reduction. However, if the levy was reduced he would recommend reductions in the budget for Gas and Fuel Oil by \$110,000 in the Equipment Operating section, noting fuel costs have lowered since the budget was compiled and the City would purchase about 60% of its fuel in the next few weeks, which would lock in the lower price. Mr. Hughes referenced his memorandum detailing four areas of the revenue budget that could be impacted and recommended the Council take the following actions: 1. Adopt the full general fund levy; 2. Reallocate the fuel/petroleum expenditure budgets to the 2009 contingency budget; 3. Designate \$499,312 of the 2007 surplus for 2009 contingencies and transfer \$400,000 to the Construction Fund; and, 4. Closely monitor 2009 revenues to determine if spending decisions need to be delayed or reduced.

The Council discussion included: there would likely not be a budget surplus for 2008; the public works debt service equaled about one-third of the increase; the 2007 overage could be transferred to 2009 contingencies and then reallocated to another purpose in the future, if needed; and, concern was expressed that the public works bond be used for a new public works facility and not for any other purpose. Mr. Hughes explained legally the public works bond could only be used for a new facility with one exception. If the purchase of the Con Agra property did not move forward, the City could use that one-year levy for improvements to the existing public works building or other eligible public works property. If that was not the case, the City had to credit back what was levied in 2009. The Council emphasized that the new public works facility was a necessity.

The Council agreed that while some residents testified at the Truth in Taxation meeting that they were looking for the Council to make any reduction possible, a general levy reduction of one-half percent would be negligible. It was noted that the public works levy comprised about one-third of the levy increase (2.4 percent). The Council discussed that it may take months for the State to determine whether the Con Agra property was buildable or needed to be mitigated and the public works levy funds needed to be protected to assure they were only used for a new public works building. Mr.

Hughes indicated that was the only legal use for the funds but the Council could adopt a resolution to include that point in addition to adoption of the budget resolution.

The Council discussion emphasized their desire that any Public Works Debt Service levy would be spent on a new Public Works Facility and only if necessary the least amount that would assure the health and safety of the City's employees would be spent on the existing Public Works Facility, if the Con Agra property could not move forward. Attorney Knutson advised that the public works levy could only be used for a new public works facility or capital improvements to the current public works facility. The Council indicated it was comfortable with the dialog and convinced the money would not be spent unnecessarily on the current facility or other projects so a new facility could be constructed. **Member Housh introduced Resolution No. 2008-128 Adopting the Budget for the City of Edina for the Year 2009, and Establishing Tax Levy for Year 2009, Payable in 2009.** Member Swenson seconded the motion.

Rollcall:

Ayes: Bennett, Housh, Masica, Swenson, Hovland

Motion carried.

FRANCE AVENUE SIDEWALK IMPROVEMENT HEARING CONTINUED TO FEBRUARY 3, 2009, REGULAR MEETING Following discussion, **Member Bennett made a motion, seconded by Member Masica, to continue the France Avenue Sidewalk Improvement Hearing to the February 3, 2009, regular meeting.**

Ayes: Bennett, Housh, Masica, Swenson, Hovland

Motion carried.

NINE MILE PETITION Following discussion, it was noted that the January 6, 2009 agenda would include a joint presentation by the Three Rivers Park District staff, Nine Mile Watershed District Administrator, and representatives of BTEF.

MAYOR AND COUNCIL COMMENTS Each Member and Mayor Hovland expressed their appreciation to Member Masica for her contribution to the City of Edina while serving on the Council, wished her the best, and stated she would be missed. Member Masica acknowledged and thanked staff for their contributions.

There being no further business on the Council Agenda, Mayor Hovland declared the meeting adjourned at 10:32 p.m.

Respectfully submitted,

Debra A. Mangan, City Clerk